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Supreme Court, U.S.
FILED
AUG 26 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term - 1987

MARY A. COLLIA and PHILIP J. COLLIA,

Petitioners

V.

McJUNKIN, a West Virginia Corporation,

Respondent

On petition for a writ of certiorari
to the Supreme Court of Appeals
of the State of West Virginia

PETITION FOR A WRIT OF CERTIORARI

Mary A. Collia, Pro Se
1334 Virginia Street East
Charleston, West Virginia
(304) 342-4243

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1326 Virginia Street East
Charleston, West Virginia 25301
(304) 342-4243

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Question Presented

1. Is it legal and ethical for any attorney to write a lease while employed by both parties involved? Isn't this a Conflict of Interest?

   (Not answered by the Circuit Court of Kanawha County and Supreme Court of Appeals of West Virginia)

2. Should a lease be allowed to continue when the terms are so one-sided as to deprive the owners of their property rights.
   (Not considered by the courts)

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1987

Miss Mary Angelina Collia and Philip J. Collia, individually,

Petitioners

vs.

McJunkin, a West Virginia Corporation,

Respondent

PETITION FOR A WRIT OF CERTIORARI

The Petitioners, Miss Mary Angelina Collia and Philip J. Collia individually, respectively pray that a Writ of Certiorari issue to the Supreme Court of Appeals of West Virginia to review its judgment and opinion entered in this proceeding.

Opinion of the Court

This petition seeks review of the opinion and judgment of the Supreme Court of Appeals of West Virginia in the case of Miss Mary A. Collia and Philip J. Collia v. McJunkin, a West Virginia Corporation, W.Va. 17250. (App. 17250)

Jurisdiction

The opinion and order of the Supreme Court of Appeals of West Virginia were entered on June 5, 1987 (Appendix B, C).

This petition is filed because the Court did not consider the conflict of interest and a lease that is one-sided, depriving the petitioners of their property rights.

Statement of Case

Introduction

This petition for certiorari is to seek review of the judgment of the Supreme Court of Appeals of West Virginia which upheld the judgment and order of the Circuit Court of Kanawha County, West Virginia, rendered June 5, 1987.

Proceedings

On September 23, 1985, the petitioners filed the Complaint in the Circuit Court of Kanawha County to void and set aside the lease with McJunkin.

McJunkin filed a Motion to dismiss the complaint on October 24, 1985.

The Petitioners responded with a Motion to Deny Dismissal on the 6th of November, 1985.

On February 28, 1986, a hearing was held in the Circuit Court for the pending Motion for Dismissal and the petitioners Motion to Deny Dismissal.

A Judgment Order dismissing the petitioners' Complaint was entered by the Circuit Court March 5, 1986.

On March 18, 1986 the petitioners filed a petition for appeal with the Supreme Court of Appeals of West Virginia. This petition was denied by the Court June 12, 1986.

The petitioners orally re-petitioned the Court of Appeals and the appeal was accepted July 2, 1986.

The petitioners filed an Appeal Brief with Supreme Court of Appeals of West Virginia July 15, 1986.

McJunkin submitted an Appellee Brief on August 29, 1986.

On January 22, 1987 McJunkin submitted an Appellee's Supplemental Appeal Brief.

On June 5, 1987 the Supreme Court of Appeals of West Virginia affirmed the decision of the Circuit Court of Kanawha County, Charleston, West Virginia.

Statement of Facts

Petitioners are the owners of that certain parcel of land situate on the northly side of Milton Street, in the City of Charleston, Kanawha County, West Virginia and being more particularly designated and described as being All of lot no. 18 of the Chilton Addition to the City of Charleston, Kanawha County, West Virginia, which said lot has a front footage of forty (40') feet more or less and extends back therefrom one hundred twenty (120') feet to an alley.

The McJunkin Corporation desired to buy the subject premises for years prior to the lease. Mr. Baldock, McJunkin's representative approached the petitioners five years before their mother's death to buy the subject premises. Petitioners refused to sell subject premises.

After the death of the petitioners' mother, December 4, 1964, they hired Mr. Paul N. Bowles to settle her estate. Since Mr. Bowles was their legal counsel the petitioners expected him to protect their interest. At no time did Mr. Bowles tell the petitioners that he represented McJunkin's interest only and not the petitioners' interest. This is a conflict of interest and the petitioners were trusting victims.

Had Mr. Bowles told the petitioners he represented McJunkin's interest only <u>there would have been no lease</u>. The petitioners also told Mr. Bowles the subject premises could not be

subleased. The only persons at the signing of the lease were Mr. Bowles and the petitioners.

Upon reading this lease, it is self-evident that it is one-sided. The terms are all in favor of the defendant, the McJunkin Corporation. The only consideration the petitioners get is $50.00 a month each and with this consideration the petitioners pay the real estate taxes. In this lease there is no clause for subleasing the subject premises and by the same token there is no clause stating the petitioners cannot raise the rent.

Upon reviewing McJunkin's briefs filed in the Circuit Court of Kanawha County, West Virginia and the Supreme Court of Appeals of West Virginia, the petitioners found contrary statements regarding the subleasing of the subject premises:

(1) In the Circuit Court of Kanawha County McJunkin states in their briefs the subject

premises are subleased to the State of West Virginia.

(2) In the Supreme Court of Appeals of West Virginia McJunkin states in their briefs the subject premises are not subleased to the State of West Virginia.

The following excerpts in McJunkin's briefs show contrary statements.

Excerpt from McJunkin Brief filed October 24, 1985 in the Circuit Court of Kanawha County Civil Action No. 85-C-3877, page 2.

On November 5, 1984, McJunkin entered into a lease with the State of West Virginia through which McJunkin leased its building located at 1400 Hansford Street in Charleston, Kanawha County, West Virginia, together with an adjoining parking area to the State, which parking area included the subject premises.

Excerpt from McJunkin Brief filed January

21, 1987 in the Supreme Court of Appeals of West Virginia Appeal no. 17250 page 2.

Assuming the subject premises were a part of the property leased to the State by McJunkin, the appellants' lease contains no restriction on subleasing which limits the policy favoring the free alienation of property under the common law of West Virginia. However, the subject premises were not included in the property leased by McJunkin to the State.

Excerpt from McJunkin Brief filed January 21, 1987 in the Supreme Court of Appeals of West Virginia page 3.

This portion of the parking area containing the appellants' property is still utilized by McJunkin employees on a daily basis. It was not leased to the State along with the office building.

Argument

1. The Conflict of interest.

Based upon the circumstances by which this lease was obtained there is a conflict of interest. No attorney can serve two employers at the same time in a lease agreement without being partial to one of them. This is attested by the fact that the lease is so one-sided in favor of McJunkin. The petitioners were trusting victims. Due to the conflict of interest the petitioners were deprived of their property rights.

Conclusion

As this petition has demonstrated, the Supreme Court of Appeals of West Virginia has rendered a decision which imposes hardship and stress on the petitioners.

For those reasons we respectively request the Petition for Certiorari be granted so that this Court can properly review the decision of the Supreme Court of Appeals of West Virginia.

Respectively submitted,

Miss Mary A. Collia
1334 Virginia Street East
Charleston, W.Va. 25301
304-342-4243
Petitioners, Pro Se

Philip J. Collia
1326 Virginia Street East
Charleston, W.Va. 25301
304-342-4243
Petitioners, Pro Se

CERTIFICATE OF SERVICE

We, Philip J. Collia and Mary A. Collia, do hereby certify that we this 21st day of August, 1987, served the appellee by mailing a true copy thereof first class U.S. postage prepaid to the following address:

William M. Herlihy, Esquire
Spilman, Thomas, Battle &
Klostermeyer
Post Office Box 273
Charleston, West Virginia 25321-0273

Petitioners

Philip J. Collia

Philip J. Collia

Mary A. Collia

Mary A. Collia

APPENDIX A

Appendix A

IN THE CIRCUIT COURT OF KANAWHA COUNTY,
WEST VIRGINIA

PHILIP J. COLLIA and
MARY A. COLLIA,

Plaintiffs,

v. CIVIL ACTION NO. 85-C-3877

MCJUNKIN CORPORATION,

Defendants.

ORDER GRANTING MOTION TO DISMISS

On February 28, 1986, came McJunkin Corporation, by counsel, William M. Herlihy, on its Motion to Dismiss and Philip J. Collia and Mary A. Collia, representing themselves on their Motion to Deny Dismissal of Civil Action, both motions having been timely and properly noticed for hearing.

Upon reviewing the parties' respective motions in this case and entertaining the oral argument of Philip J. Collia and Mary A. Collia as well as counsel for McJunkin Corporation, the Court finds that the plaintiffs have failed to

raise a claim in their Complaint upon which this Court may grant them relief; and, therefore, the Court hereby ORDERS that the complaint of the plaintiffs shall be dismissed in its entirety and with prejudice.

The Court takes notice that the plaintiffs Philip J. Collia and Mary A. Collia object and except to the Court's ruling in this Order.

ENTERED: March 5th, 1986.

/s/ John Hey
The Honorable John Hey,
Judge, Thirteenth Judicial Circuit

SUBMITTED BY:

/s/ William M. Herlihy
William M. Herlihy
Counsel for McJunkin Corporation

State of West Virginia
County of Kanawha, SS
I, Phyllis J. Rutledge, Clerk of Circuit Court of said County and said State, do hereby certify that the foregoing is a true copy from the words of said Court,
Give under my hand and
of said Court 7th day of March, 1986
/s/Phyllis J. Rutledge - Clerk

APPENDIX B

Appendix B

NO. 17250

MISS MARY ANGELINA COLLIA and
PHILIP J. COLLIA

v.

McJUNKIN, a corporation

Kanawha County Affirmed

Per Curiam

1. "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b) (6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957)." Syllabus Point 3, Chapman v.Kane Transfer Co., 160 W. Va. 530, 236 S.E.2d 207 (1977).

2. "Except in cases of fraud or mistake, parol evidence can not be admitted to vary, contradict, add to or explain the terms of a complete and unambiguous lease, by proving that the agreement of the parties was different from what

it appears upon the face of the lease." Syllabus Point 2, Gwinn v. Rogers, 92 W. Va. 533, 115 S.E. 428 (1922).

3. "Unless there is some statutory prohibition or an express provision in the lease to the contrary, a lease on real property, other than a tenancy at will, is assignable." Syllabus Point 2, Randolph v. Koury Corp., ___ W.Va.___, 312, S.E.2d 759 (1984).

Per Curiam:

This appeal by Miss Mary Angelina Collia and Philip J. Collia is from the final order of the Circuit Court of Kanawha County dismissing their complaint under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure because it failed to state a claim upon which relief could be granted. The Collias sought to break a 1965 lease agreement contending that the lease provisions were inequitable and that the defendants improperly subleased the leased property. After examining the record, we conclude that the trial court did not err in dismissing the complaint.

The plaintiffs own Lot No. 18 of the Chilton Addition in the City of Charleston. On October 8, 1965, the plaintiffs entered into a lease agreement with the defendant, McJunkin Corporation. The terms and conditions of the lease agreement include, in part, that the lease would run for a term of twenty years with two extension options of ten years each and an annual

rental of $1,200. The lease agreement could be terminated if the defendant McJunkin missed a monthly rental payment and after written notification failed to cure the default within thirty days. The Collias, as lessors, were to pay the real estate taxes and other assessments against the leased land for taxes or public improvements. The lessee, McJunkin, was to reimburse the lessors for all taxes and assessments against any buildings or other improvements placed by the lessees on the leased premises. The written lease contains no provision concerning subleasing or assignment of the lease.

A trial court may dismiss a pleading for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. The purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the complaint. Mandolidis v. Elkins Indus., Inc., 161 W.Va. 695, 717, 246 S.E.2d 907, 920 (1978); John W.

Lodge Dist. Co. v. Texaco, Inc., 161 W.Va. 603, 604-05, 245 S.E.2d 157, 158 (1978). Motions to dismiss are generally viewed with disfavor because the complaint is to be construed in the light most favorable to the plaintiff and its allegations are to be taken as true. Sticklen v. Kittle, 168 W.Va. 147, 163-64, 287 S.E.2d 148, 157 (1981). In Syllabus Point 3 of Chapman v. Kane Transfer Co., 160 W.Va. 530, 236 S.E.2d 207 (1977), this Court held:

> "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957)."

See also Syllabus Point 2, Sticklen v. Kittle, supra; Syllabus, Fass v. NOWSCO Well Service, Ltd., ____ W.Va.____, 350 S.E.2d 562 (1986); Syllabus, Warner v. Kittle, ____W.Va.____, 280 S.E.2d 276 (1981).

In this case, the plaintiffs' complaint fails to set forth facts which show a right entitling them to legal relief. The plaintiffs' complaint is that the annual rental is so inadequate as to warrant cancellation of the lease. We have generally held that leases and deeds are not voidable for lack of consideration alone. McElwain v. Wells, ___W.Va.___, ___, 322 S.E.2d 482, 485 (1984); Ferra v. Young, 158 W.Va. 977, 984, 216 S.E.2d 575, 579 (1975).

The plaintiffs also allege that McJunkin's attorney did not include in the lease a clause against subletting which they had asked for. The parol evidence rule provides that, in controversies between parties to an agreement, evidence of prior or contemporaneous oral negotiations or statements is inadmissible to vary, contradict, add to, or explain the terms of a complete, unambiguous, written instrument as stated in Syllabus Point 2 of Gwinn v. Rogers, 92 W.Va. 533, 115 S.E. 428 (1922):

> "Except in cases of fraud or mistake, parol evidence can not be admitted to vary, contradict, add to or explain the terms of a complete and unambiguous lease, by proving that the agreement of the parties was different from what it appears upon the face of the lease."

See also Mundy v. Arcuri, 165 W.Va. 128, 130, 267 S.E.2d 454, 456 (1980); Syllabus Point 1, North American Royal Coal Co. v. Mountaineer Developers, Inc., 161 W.Va. 37, 239 S.E.2d 673 (1977); Wilkinson v. Searls, 155 W.Va. 475, 184 S.E.2d 735 (1971).

As an additional theory, the plaintiffs urge that without a specific provision permitting subletting, the right to sublet does not exist. This, however, is contrary to the general rule found in Syllabus Point 2 of Randolph v. Koury Corp., ___W.Va.___, 312 S.E.2d 759 (1984):

> "Unless there is some statutory prohibition or an express provision in the lease to the contrary, a lease on real property, other than a tenancy at will, is assignable."

For the foregoing reasons, the dismissal order of the Circuit Court of Kanawha County is affirmed.

Affirmed.

APPENDIX C

Appendix C

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 5th day of June, 1987, the following order was made and entered, to-wit:

Miss Mary Angelina Collia and Philip J. Collia, Plaintiffs Below, Appellants

vs.

McJunkin Corporation, a corporation, Defendant Below, Appellee

Upon an appeal from a judgment of the Circuit Court of Kanawha County rendered on the 5th day of March, 1986.

The Court having maturely considered the transcript of the record and the briefs filed herein, is of opinion for reasons stated in writing and filed with the record that there is no error in said judgment. It is therefore considered and ordered by the Court that the judgment of the Circuit Court of Kanawha County rendered on the 5th day of March, 1986, be, and the same is hereby, affirmed, and that the appellee do recover of and from the appellants its costs

about its defense in this Court in this behalf expended, and damages according to law; all of which is ordered to be certified to the Circuit Court of Kanawha County.

The syllabus of points adjudicated, prefixed to the written opinion prepared Per Curiam, was concurred in by Chief Justice McGraw, and Justices Neely, Miller, McHugh, and Brotherton.

A True Copy

ANCIL G. RAMEY, CLERK
Supreme Court of Appeals
Capitol Building
Charleston, WV 25305

Attest: _____
Clerk, Supreme Court of Appeals

APPENDIX D

Appendix D

THIS LEASE AGREEMENT, made the 8th day of October, 1965, by and between PHILIP J. COLLIA, single, and MARY COLLIA BORING, unmarried, parties of the first part, hereinafter called "Lessors," and McJUNKIN CORPORATION, a West Virginia corporation, party of the second part, hereinafter called "Lessee;"

W I T N E S S E T H:

That for and in consideration of the respective commitments and undertakings of the parties and the benefits accruing and to accrue to each, Lessors do hereby lease and let unto Lessee all that certain lot or parcel of land, with the improvements thereon and the appurtenances thereunto belonging, situate on the northerly side of Milton Street, in the City of Charleston, Kanawha County, West Virginia, and more particularly designated and described as being all of Lot No. 18 of the Chilton Addition to the City of Charleston, as the same is laid out, shown and designated upon the map of said Chilton Addition

of record in the office of the Clerk of the County Court of Kanawha County, West Virginia, said lot fronting forty (40) feet, more or less, on the northerly side of said Milton Street and extending back therefrom to an alley.

This lease is made upon the following terms and conditions:

(1) The term of this lease is for a period of twenty (20) years, commencing December 1, 1965, and ending at midnight on November 30, 1985.

(2) Lessee shall pay to Lessors a rental during the term of the lease in the amount of One Hundred Dollars ($100.00) a month, payable each month in advance and divided and payable to Lessors as follows:

Philip J. Collia - $50.00 each month

Mary Collia Boring - $50.00 each month

(3) Lessee shall have the right to sell, dismantle or remove any and all buildings and improvements now on the leased premises or here-

after constructed or placed on the premises; and Lessee shall not be liable or responsible for the replacement or restoration of any such buildings or other improvements.

(4) Lessee shall have the right to place or construct on the leased premises such buildings, structures, fixtures, pavement or other improvements as it may desire and all buildings, fixtures, structures or other improvements placed or constructed on the premises shall be and remain the personal property of Lessee. Lessors shall not be liable or responsible for the repair, maintenance, insurance or restoration of any such items placed or constructed by Lessee on the premises and such items shall be the sole responsibility of Lessee.

(5) Lessee agrees to indemnify and save Lessors harmless from all claims, demands, charges, or suits for damage to property or injury to persons arising in any way from Lessee's use and occupancy of the leased premises.

(6) Lessee agrees to pay all charges for water, gas, electricity, sewer and incinerator services furnished to the leased premises.

(7) Lessors agree to pay all real estate taxes, special assessments and other charges assessed or levied by any governmental body against the leased land for taxes or public improvements. However, Lessee agrees to pay or to reimburse Lessors for all taxes, special assessments or charges assessed or levied against any buildings or other improvements constructed or placed by Lessee on the leased premises.

(8) In the event the leased premises, or any part thereof, are taken pursuant to any condemnation proceeding, or are sold under threat of condemnation and the remainder (if any) is not suitable for use by Lessee, Lessee shall have the right to terminate this lease. In the event only a part of the premises are so taken or so sold and the remainder is suitable for use

by Lessee, the rent payable hereunder shall be reduced for the remainder of the term in proportion to the part of the premises so taken or sold, i.e., if one-third of the total area is taken, the rent shall be reduced by one-third for the remainder of the term.

In the event of condemnation proceedings or threat of condemnation proceedings, Lessee shall be entitled to assert and receive payment for the value, if any, of its leasehold estate.

(9) In the event Lessors desire to sell the leased premises during the term hereof, or any extension or renewal, Lessee shall have the first option to purchase the same at the same price and upon the same terms and conditions as the premises may be offered for sale to any other party. Lessors shall notify Lessee in writing of any bona fide offer to purchase received by them and which they are willing to accept. Lessee's option to purchase, as aforesaid, shall exist for a period of thirty (30)

days after receipt of such notice. If Lessee does not exercise its option to purchase during such period, its right to purchase at such price and upon such terms shall terminate as to that offer, but shall exist with respect to any subsequent offer to sell upon the same terms and conditions as aforesaid.

(10) If Lessee fails to pay any installment of rent when the same is due and payable and such default continues for a period of thirty (30) days after written notice thereof from Lessors to Lessee, Lessors shall have the right to terminate this lease and all of Lessee's rights thereunder and may re-enter and take possession of the leased premises, exercising all the remedies afforded to landlords under the laws of West Virginia for the collection of rents.

(11) Lessee shall have the right to renew and extend this lease for two (2) additional periods of ten (10) years each, the first of such periods to commence on December 1, ~~1995~~ 1985,

and the second to commence on December 1, ~~2005~~ 1995, upon giving to Lessors written notice of such extension or renewal at least six months in advance of the termination of the lease period then in effect.

(12) All rental payments due hereunder may be made by Lessee's checks mailed to Lessors at the address hereinafter specified and all notices given by either party may be given by registered or certified mail, mailed postage prepaid to the address hereinafter specified, unless a party notified the other or others of a different mailing address.

The addresses specified for each party are as follows:

Philip J. Collia
1326 Virginia Street, East
Charleston, West Virginia

Mary Collia Boring
1326 Virginia Street, East
Charleston, West Virginia

McJunkin Corporation
P.O. Box 513
Charleston, West Virginia

(13) This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, devisees, personal representatives, successors and assigns.

WITNESS the following signatures and seals:

_____(SEAL)
Philip J. Collia

_____(SEAL)
Mary Collia Boring

McJUNKIN CORPORATION

By_____
Its President

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

I, _____, a notary public of said county, do certify that PHILIP J. COLLIA and MARY COLLIA BORING, whose names are signed to the writing above, bearing date the 8th day of October, 1965, have this day acknowledged the same before me in my said county.

Given under my hand this _____ day of October, 1965.

My commission expires _____.

_____

Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

I, _____, a notary public of said county, do certify that _____ _____, President, who, as such, signed the writing above, bearing date the 8th day of October, 1965, for McJUNKIN CORPORATION, a corporation, has this day acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this _____ day of October, 1965.

My commission expires _____.

_____

Notary Public

APPENDIX E

Appendix E

Lease No. DHS-009-085

THIS CONTRACT OF LEASE, made this 5th day of November, 1984, by and between MCJUNKIN CORPORATION, a West Virginia corporation with its principal offices in Charleston, Kanawha County, West Virginia,

hereinafter referred to as "Lessor", and the STATE OF WEST VIRGINIA, by the Commissioner of Finance and Administration, hereinafter referred to as "Lessee"

WHEREAS, pursuant to provisions of Chapter 5A, Article 5, Code of West Virginia, as amended, the Commissioner of the West Virginia Department of Human Services certifies that the space herein leased is necessary for the proper function of his department, and that satisfactory space is not available in other buildings now owned or leased by the State; and

WHEREAS, the Commissioner of Finance and Administration has determined the rental hereinafter set forth does not exceed the fair rental value of the premises in its present condition; and

WHEREAS, the Commissioner of Finance and Administration, by executing this lease, hereby leases the premises for use by the WV Department of Human Services hereinafter referred to as "Tenant", who will pay the rentals therefor from Account 9150-01.

NOW, THEREFORE, THIS CONTRACT OF LEASE WITNESSETH:

That for and in consideration of the full and complete performance of the covenants,

terms, and conditions hereinafter set forth, the Lessor hereby leases unto the Lessee, for use by the Tenant, the following described premises:

> That entire building, containing approximately 40,000 square feet, more or less, located at 1400 Hansford Street in the City of Charleston, Kanawha County, West Virginia, together with an adjoining parking area adequate to accommodate 200 cars.

The parties hereto covenant and bind themselves as follows:

(1) TERM AND NOTICES

The term of this lease, subject to the provisions hereof, shall begin on the 26th day of October, 1984, and end at midnight on the 31st day of October, 1985. This lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Department of Finance and Administration before the end of the then current fiscal year.

Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

To the Lessor	To the Lessee
McJunkin Corporation P.O. Box 513 Charleston, West Virginia 25322	State of West Virginia Department of Finance and Administration Leasing Division Charleston, WV 25305

(2) RENT

The Lessee covenants that the Tenant shall pay unto the Lessor as rent for the premises herein leased, the sum of $3,278.69 for the latter portion of the month of October, 1984, and SIXTEEN THOUSAND, SIX HUNDRED, SIXTY-SIX DOLLARS AND SIXTY-SEVEN CENTS ($16,666.67) PER MONTH, thereafter

payable by receipt of invoice from the Lessor to the Tenant, and payable on the first day of every month for the preceding month during the term of this lease.

(3) UTILITIES AND OTHER RELATED SERVICES

Lessee covenants that the Tenant will be responsible for payment of all charges for utility services, janitorial service, and other related services required for its proper use of the leased premises.

(4) MAINTENANCE

Lessor binds itself to maintain the premises, including the structure of the premises, both interior and exterior; the electrical and plumbing fixtures and equipment, except such fixtures and equipment as may be owned by Tenant; and the interior and exterior painting in a good and tenantable condition equal to that of

the premises as at the time possession thereof is delivered to the Tenant. If Lessor fails to maintain the interior and exterior structure of the premises, and the electrical and plumbing fixtures and equipment owned by Lessor in a good and tenantable condition of repair, the Tenant shall request the Lessor, in writing, to correct any deficiency which may have occurred since possession of the premises by the Tenant, provided, however, such deficiency was not caused by the neglect or acts of the Tenant. Upon refusal or neglect of Lessor to comply with Tenant's request for the repair or reinstatement of previously-existing conditions, Tenant may, thirty (30) days after receipt of such request by the Lessor, cause the repairs to be made and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Tenant is fully reimbursed therefor.

(5) TAXES AND ASSESSMENTS

The Lessor will pay all taxes and assessments levied on the subject premises during the term of this lease.

(6) FIRE AND HEALTH HAZARDS

The Lessor will remove and correct any fire or health hazards not caused by the neglect or acts of the Tenant, its agents, employees or servants which any public authority may order corrected or removed during the term of this lease. Upon refusal or neglect of Lessor to comply with any such order, the Tenant may comply therewith and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Tenant is fully reimbursed therefor.

(7) SUITABILITY OF PREMISES

Lessor warrants the premises to be suitable for use as a State facility and for the conduct of Tenant's business, and that there shall be no liability on the part of the State of West Virginia, its officers, agents or employees for any loss or damage to the leased premises, whether caused by overloading the floors with equipment or otherwise installing fixtures and equipment commonly used in business offices nor any liability on any individual by virtue of any of the provisions of this lease.

(8) TRANSFER OR ASSIGNMENT OF LEASE

The Lessee agrees not to transfer or assign this lease, or sublet the subject premises without the written consent of the Lessor except, however, the Lessee may, at its option, reassign this lease and the space leased herein to another State agency other than the tenant named herein, with all other terms and conditions remaining the same throughout the remainder of the term of the lease.

(9) NEGLECT OF PREMISES

The Lessee covenants that the Tenant shall not commit waste on the premises herein leased, and that the premises will be returned to the Lessor at the termination of this lease in substantially as good condition as at the commencement thereof, damages from natural elements, normal depreciation and decay excepted.

(10) DEFAULT BY LESSEE

In the event Lessee and/or Tenant defaults in any of the covenants contained herein, the Lessor shall notify the Lessee, in writing, of such default and if such default is not corrected within sixty days after receipt of notification, the Lessor may notify Lessee that the lease is terminated, and reenter the premises herein leased.

(11) DAMAGE TO PREMISES BY FIRE, ETC.

It is agreed by and between the parties hereto that in the event the premises are destroyed or damaged by fire, natural elements, or other cause to such an extent that continued occupancy by the Tenant would be impractical, the Lessee shall give immediate notice thereof to the Lessor, in writing, and this lease shall terminate. If only a part of the premises shall be rendered untenantable, leaving the remainder suitable for Tenant's purpose, the Lessee shall notify the Lessor, in writing, and the rental shall be proportionately abated until the premises have been repaired. The Lessor shall have five (5) days from receipt of such notice to decide whether or not to repair the premises. Any repairs undertaken must be completed within a reasonable length of time after Lessor's decision. Should Lessor decide not to repair the premises, this lease shall terminate, and Lessee shall deliver possession of the premises to the Lessor and thereupon be relieved of any and all liability hereunder or concerning the premises except for any unpaid rent through the final day of occupancy.

(12) PROVISIONS FOR IMMEDIATE TERMINATION

It is further agreed by and between the parties hereto that this lease shall be considered

canceled, without further obligation on the part of the Lessee, if the State Legislature or the Federal Government should subsequently fail to appropriate sufficient funds therefor, or should otherwise act to impair this lease or cause it to be canceled (§12-3-17(2), West Virginia Code), or in the event it shall become unlawful to maintain a State facility on leased premises. In any event aforementioned, the Lessee may immediately redeliver possession of the premises to the Lessor and thereupon be relieved from any and all obligations hereunder or concerning the premises except for rent accruing prior to such date of redelivery.

(13) QUIET ENJOYMENT OF PREMISES

The Lessor covenants that at the date of this lease, Lessor was seized of said premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever, (except) _____ and that upon payment of the rentals as hereinbefore set forth, it will warrant and defend the title of Lessee against any and claims whatsoever, not arising hereunder, during the term of this lease; that the Tenant shall, at all time during the term of this lease, peaceably and quietly have, hold, and enjoy the said leased premises.

(14) CANCELLATION OF LEASE

It is further agreed by and between the parties hereto that the Department of Finance and Administration, as Lessee, shall have the right to cancel this lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty days prior to

the last day of the succeeding month (§12-3-17(1), West Virginia Code).

(15) REMOVAL OF MACHINERY AND EQUIPMENT

It is understood and agreed that all machinery and equipment installed by the Tenant, or placed upon the leased premises incident to Tenant's business, whether annexed to the freehold or not, shall remain the personal property of the Tenant, and Tenant shall have the privilege and right to remove same at any time during the term of this lease provided the premises are restored to as good condition as existed prior to installation of said machinery and equipment, reasonable wear and tear excepted.

(16) STRUCTURAL OR OTHER CHANGES TO PREMISES

In the event the Tenant requires structural or other changes in said premises to improve the use and efficiency of same, and if said changes are approved by the Commissioner of Finance and Administration, and if said changes are completed by Lessor at its cost and expense, the Lessee agrees to reappraise and renegotiate this lease to arrive at a fair rental value, if warranted.

(17) HEADINGS

The headings to the various paragraphs of this lease have been inserted for reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

(18) RENOVATIONS COMPLETED BY LESSOR

It is acknowledged by the parties hereto that the Lessor has made certain renovations to a portion of the premises herein leased, at the request of the Tenant, all at Lessor's cost and expense, as shown on a floor plan prepared by Paul Tennant of Tennant and Cummings, which floor plan is attached hereto and made a part hereof.

(19) RENEGOTIATION OF LEASE

It is understood by the parties hereto that the term of this lease shall end at midnight on the 31st day of October, 1985. Any renewal of this lease shall be in accordance with terms and provisions acceptable to both parties, such renewal to be negotiated prior to the expiration date set forth above.

PLEASE

/s/ H.B.W. Jr.
Lessor

/s/ A.H.C.
Lessee

INITIAL

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this contract of lease.

MCJUNKIN CORPORATION, Lessor

By /s/ H.B. Wehrle, Jr.
~~Its President~~
Chairman

STATE OF WEST VIRGINIA, Lessee

By Virginia L. Roberts
Commissioner of Finance and Administration, for and on behalf of the West Virginia Department of Human Services

(THIS FORM TO BE COMPLETED BY CORPORATION SECRETARY)

I, s/Paula L. Kay, certify that I am asst. secretary of MCJUNKIN CORPORATION, the corporation named as lessor in the foregoing lease; that s/H.B. Wehrle, Jr., who signed said lease on behalf of the lessor, was then ~~president~~ Chairman of the Board of said corporation; that said lease was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Affix Corporate Seal)

s/Paula L. Kay
Asst. Corporation Secretary

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, TO-WIT:

I, s/Diana D. Morris, a notary public in and for said county and state, do hereby certify that s/H. B. Wehrle, Jr., who signed the foregoing lease bearing date of November 5, 1984, for the MCJUNKIN CORPORATION, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said corporation.

Given under my hand this 12th day of November, 1984.

My commission will expire Jan. 2, 1986.

s/Diana D. Morris

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, TO-WIT:

I, Virginia K. Abood, a notary public in and for said county and state, do hereby certify that Virginia L. Roberts, who, as Commissioner

of Finance and Administration, signed the foregoing lease bearing date of November 5, 1984, for the STATE OF WEST VIRGINIA, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said state.

Given under my hand this 15 day of November, 1984.

My commission will expire January 15, 1986.

s/Virginia K. Abood

APPROVED as to FORM
this 15th day of November, 1984.

CHAUNCEY H. BROWNING, JR.
ATTORNEY GENERAL
By s/C.A. McMuller
Assistant Attorney General

HANSFORD ST.